

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRAVELERS PROPERTY,

Plaintiff,

v.

CENTEX HOMES,

Defendant.

No. C 10-02757 CRB

**ORDER VACATING HEARING AND
SETTING CASE MANAGEMENT
CONFERENCE**

Plaintiff Travelers Property Casualty Co. filed suit for declaratory and injunctive relief against Defendant Centex Homes regarding its duty to defend Defendant in two construction defect lawsuits. In its complaint, Plaintiff asked the Court to declare that Plaintiff has the right to control the defense and that Defendant had breached its duty to cooperate under Plaintiff's insurance policies. It also sought to enjoin Defendant from refusing Plaintiff's appointed counsel's representation of Defendant in the construction defects actions.

Defendant now brings this Motion for Judgment on the Pleadings as to Plaintiff's injunctive relief cause of action. Dkt. 129. Plaintiff opposes the motion and asks the Court to find that Plaintiff has the right to control the Defendant's defense in the underlying lawsuits and the right to select counsel for that defense. Opp'n (Dkt. 151) at 10-15

Before Defendant filed the present motion on March 4, 2011, Plaintiff's Motion for Summary Judgment, Dkt. 83, was pending before the Court. That motion was heard on March 18, 2011. On April 1, 2011, the Court granted partial summary judgment for Plaintiff,

1 finding that: (1) Plaintiff provided an immediate, complete, and full defense; (2) Plaintiff had
2 the right to control the defense and select counsel; (3) Defendant breached its duty to
3 cooperate and substantially prejudiced Plaintiff; and (4) no conflict of interest existed that
4 entitled Defendant to independent counsel. See generally Order Granting in Part and Den. in
5 Part Pl.'s Mot. for Summ. J. (Dkt. 161). As a result of these findings, Plaintiff was relieved
6 of its duties to defend and indemnify Defendant in the underlying actions. Id. at 15.

7 In light of the Court's April 1, 2011 Order, the Court declines to rule on the present
8 motion and VACATES the hearing set for April 15, 2011. The Court instead SETS a case
9 management conference for 8:30 a.m. on the same day, April 15, 2011 in courtroom 8.

10 **IT IS SO ORDERED.**

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12 Dated: April 1, 2011



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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE